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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 03.05.2024

+ **W.P.(C) 7402/2015**

APPELLATE TRIBUNAL FOR FORFEITED PROPERTY

..... Petitioner

Through: Ms. Nidhi Raman, CGSC with
Mr.Zubin Singh and Mr. Akash
Mishra, Advocates.

Versus

SHAILENDER KUMAR AND ANR.

..... Respondents

Through: Mr. Kunwar A.K. Singh, Advocate
with respondent no.1

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present writ petition under Article 226 of the Constitution of India seeks to assail the order dated 13.05.2015 passed by the learned Central Administrative Tribunal in O. A. No. 2805/2013. Vide the impugned order, the learned Tribunal has quashed the charge memo dated 16.02.2012 issued to the respondents alongwith the enquiry report dated 11.04.2012 as also all the consequential orders including the orders passed by the disciplinary authority, appellate authority and the reviewing authority.
2. The respondents' case, as set up before the learned Tribunal, was that he had been appointed as a Stenographer in the petitioner organisation.

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While he was working as a Stenographer (Grade II), a charge memorandum dated 16.02.2012 was issued to him on the following charge:

“That the said Shri Shailender Kumar, Stenographer Grade-II in the office of Appellate Tribunal for Forfeited Property, New Delhi is an habitual and compulsive absenter and highly irregular in attending office, Despite advices and even warning in the past, Shn Shailender Kumar has continued to absent himself from office for days at will, without either advance sanction of leave or even prior intimation to his controlling officer. Lately, his tendency to remain unauthorisedly absent from office has crossed all limits, Thus, in the month of November, 2011, he was absent on Nov. 14 (for which there is even no leave application on record) and again from Nov. 18 to Nov. 24 for which the leave application was submitted only on Nov.25. Similarly, during, December' 2011, he was absent on Dec. 1, 2, 7, 8, 13, 14, 15, 16, 20 21,22,27,28 and 29 without any prior sanction of leave. For his absence on Dec. 20,21 and 22' there is even no application on record whereas for his absence on other days in Dec. 11, he Emited leave applications after he had availed leave at his will. Similarly, in the month of January' 2012, he was absent on Jan. 2,3,5,10,11,12,16,17,18,20,23, 24, 25 and 27 without any prior sanction of leave. In the month of February also, he has so far been unauthorisedly absent from office on Feb. 1, 3, 7, 8, 9and 14. This is despite the fact that earlier also disciplinary proceedings were instituted against Shri Shailender Kumar which had led to imposition of minor penalty on him. Thus, Shri Shailender Kumar's above conduct displays total lack of devotion to duty and is highly unbecoming of a government servant thus violating Rule 3(1) (ii) and 3(1) (iii) of CCS (Conduct) Rules.”

3. As per the record, even though a list of documents, by which the charge against the respondents was proposed to be proved, was enclosed as Annexure III to the charge memorandum, the list of witnesses, which was Annexure IV to the charge memorandum, clearly stated that no witness was proposed to be examined and the column of list of witnesses stated “Nil”. It was the respondent's case that on receipt of the charge memorandum, he submitted a representation dated 14.03.2012 requesting the petitioner to condone the period during which he remained absent from duty on account



of his psychiatric ailment and also prayed that the delay on his part in submitting the leave applications be condoned. Upon not finding this reply satisfactory, the petitioner appointed an enquiry officer. In the enquiry, though the respondent denied having committed any misconduct and explained that he had to take repeated leaves on account of his medical problems, the enquiry officer, by relying on the documents filed by the presenting officer, held the respondent guilty of the charge

4. This enquiry report dated 11.04.2012, was accepted by the disciplinary authority and consequently vide an order dated 04.05.2012, penalty of dismissal was imposed on the respondent. Being aggrieved, the respondent preferred an appeal before the appellate authority, which was rejected. His petition to the reviewing authority met the same fate. The respondent then approached the learned Tribunal by way of the aforesaid O.A, which has been allowed under the impugned order.

5. It is in these circumstances that the present petition has been filed by the petitioner. In support of the petition, learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that since the respondent had admitted that he had remained absent from duty, the requirement of producing a witness to prove the documents relied upon, in the enquiry, stood waived. By drawing our attention to the reply to the charge memorandum submitted by the respondent, she submits that there was no requirement to examine any witnesses as the respondent had himself admitted that he had remained on unauthorised leave; his only prayer in his reply being that the delay in filing of leave applications be condoned. Alternately, she submits that even if the proceedings were found to be in breach of Rule 14 of the CCS (CCA) Rules



1965, the learned Tribunal ought to have granted liberty to the petitioner to hold a *de novo* enquiry against the respondent, instead of restraining the petitioner from initiating disciplinary proceedings against him. She therefore, prays that the impugned order be set aside.

6. On the other hand, learned counsel for the respondents supports the impugned order and submits that the petitioner's plea that the respondent had admitted the charge is absolutely incorrect. He submits that no witness was named in the charge sheet itself and therefore, the petitioner's plea that on account of the reply submitted by the respondent there was no requirement to examine any witnesses in the enquiry was wholly misplaced. He submits that since the charge relate to the year 2012 and ten years have already elapsed, the respondent ought not to be subjected to any *de novo* departmental enquiry at this belated stage.

7. Having considered the rival submissions of the parties, we find that it is an admitted position that no witness was cited by the petitioner to tender/ prove the documents which were produced in the enquiry. Though learned counsel for the petitioner has vehemently urged that on account of the respondent's admission of his remaining on unauthorised leave, the examination of witnesses to tender and prove the documents relied in the enquiry would have been a futile exercise. Having perused the reply submitted by the respondent, we are unable to accept this plea. We say so, firstly, because we find that in the reply submitted by the respondent, he had merely explained the reasons for his absence, which according to him were on account of his psychological ailment and also as the respondent, we find, had nowhere admitted having committed any misconduct. Secondly, we find that even before a reply to the charge memorandum was submitted by



the respondent, the petitioner had in Annexure IV to the Charge Memorandum already declared that no witness was proposed to be examined.

8. In our considered view, the learned Tribunal was correct in holding that the production of witnesses, in an enquiry, is essential to tender and prove the documentary evidence, which witness the respondent could have cross-examined. By not giving an opportunity to the respondent to examine any witness, the petitioner had undoubtedly curtailed his essential right in the enquiry. In this regard, we may refer to a decision of this Court in **Anil Kumar Dhyani v. Union of India & Ors.** (2017) SCC OnLine Del 9911 wherein, like in the present case, documents filed by the department were relied upon by the Enquiry Officer even though no witness had been examined to exhibit those documents. The relevant extracts of the said decision as contained in paragraph nos.17 & 18 thereof, read as under:-

“17. Though it is well settled that in a domestic inquiry, strict rules of evidence do not apply and the inquiry officer is not expected to write a judgment like a Judge of a Court but it is also equally a well settled proposition, that the domestic inquiry is a quasi judicial proceeding and the inquiry officer, while performing this quasi judicial function, has a duty to carefully examine the evidence led before him and he cannot merely rely on the documents filed by the Presenting Officer to hold the delinquent employee guilty. Inference on facts by an inquiry officer must be based on some evidence, which is led before the inquiry officer in compliance of the principles of natural justice and he is expected to ensure that at least the evidence presented by the management, is sufficient to hold that the charge is proved.

18. Coming to the facts of the present case, we find that the Petitioner had specifically denied the documents on which reliance had been placed by the Respondents, and he had repeatedly requested for production of original documents, so as to enable him to carry out admission/denial of the documents relied upon. It is evident that the documentary evidence relied upon in the chargesheet, was not admitted by the Petitioner employee. In such a situation, in our



considered view, it was imperative for the Respondents management to, at least, examine some witness to exhibit those documents before the inquiry officer, and only when the documents were exhibited through a witness, before the inquiry officer, and sufficient opportunity granted to the charged officer to cross-examine the witness, that reliance could have been placed on the same to hold the Petitioner guilty.”

9. In this regard, it will also be apposite to refer to the decision of the Apex Court in **Roop Singh Negi v. Punjab National Bank & Ors. (2009) 1 SCC (LS) 398**, which was relied upon by the learned Tribunal. The relevant extracts of the said decision as contained in paragraph no.10, thereof, read as under:-

“10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.”

10. In the light of the aforesaid, we are of the view that the finding of the learned Tribunal that the enquiry was vitiated on account of non-compliance



of Rule 14 of the CCS (CCA) Rules, cannot be faulted with. We, therefore, see no reason to interfere with this finding of the learned Tribunal.

11. Now coming to the petitioner's second plea that even if the departmental enquiry was found to be vitiated on account of breach of CCS (CCA) Rules as also principles of natural justice, the petitioner ought to be granted permission to re-open the departmental proceedings. The respondent has vehemently urged that no such liberty should be granted to the petitioner at this belated stage. Having given our thoughtful consideration to the rival pleas of the parties, we are of the view that taking into account the nature of charge levelled against the respondent, which the petitioner claims can be easily proved through documentary evidence already available, the petitioner ought to be granted liberty to hold a *de novo* enquiry. Given the respondent's own stand that he had remained on unauthorised leave and was taking treatment from private doctors, the learned Tribunal erred in accepting his bald plea that there were compelling reasons for him to remain absent from duty.

12. In the light of the aforesaid, we are of the view that there was no justification for the Tribunal to curtail the right of the petitioner to hold a *de novo* enquiry against the respondent. In the facts of the present case, we are persuaded to accept the petitioner's prayer for re-opening the departmental enquiry against the respondent.

13. We, therefore, modify the impugned order by granting liberty to the petitioner to hold a *de novo* enquiry against the respondent by reinstating him in service with only 50% back wages, as against full back wages directed under the impugned order. In case, the petitioner decides to hold a *de novo* enquiry, it will furnish to the respondent the list of witnesses that



the petitioner wishes to produce, if any, to prove the charges and thereafter tender its documentary evidence before the enquiry officer in accordance with law. The enquiry will thereafter be conducted as per the laid down procedure and in strict compliance with Rule 14 of the CCS(CCA) Rules.

14. The writ petition is disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 3, 2024/So